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Magistrate Judge Dean Brett

JUL 10 2015

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE ORDER REQUIRING GOOGLE, INC.
TO ASSIST IN THE EXECUTION OF
SEARCH WARRANTS ISSUED BY THIS
COURT

Case No.

1515-309

APPLICATION

(FILED UNDER SEAL)

INTRODUCTION

The United States of America, by and through Annette L. Hayes, United States Attorney, and Benjamin T. Diggs, Special Assistant United States Attorney, hereby moves this Court under the All Writs Act, 28 U.S.C. § 1651, for an order requiring Google, Inc. ("Google") to assist in the execution of federal search warrants by bypassing the lock screens of two Android devices, specifically, (1) a Samsung phone, model SM-N900; SSN: N900GSMH, International Mobile Equipment Identity ("IMEI") number: 359543/05/117648/1; and Serial Number: RF1DA6QK00N; and (2) an HTC phone, model OP9C510 D816d; International Mobile Subscriber Identity ("IMSI") number: 302720589507615, and Serial Number 37H10442-00M-A.

APPLICATION FOR ORDER REQUIRING GOOGLE, INC. TO
ASSIST IN EXECUTION OF SEARCH WARRANTS/- 1
USAO# 2015R00315

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FACTS

U.S. Homeland Security Investigations ("HSI") currently has in its possession two Android devices that are the subject of search warrants issued by this Court. Attempts to access the devices pursuant to prior search warrants were unsuccessful because the devices are locked. Because the Android devices are locked, law enforcement agents are not able to examine the data stored on the Android devices as commanded by the search warrants.

The two Android devices are described as follows: (1) a Samsung Galaxy Note 3, with Model number: N900, on the Rogers network with access number (phone number) 778-628-3322, IMEI number: 359543/05/117648/1 and Serial Number: RF1DA6QK00N; and (2) an HTC, with Model number: OP9C510 D816d, on the AT&T network with access number (phone number) 206-419-5063,¹ IMSI number: 302720589507615, Serial Number: 37H10442-00M-A, and believed to be associated with the Gmail account AWE401943@gmail.com (together, the "Android Devices").

Google, the creator of the Android operating system and producer of the Android Devices, may have the capability of bypassing the Android Devices' lock and thereby retrieving data stored on the Android Devices that is not currently accessible to HSI.

¹ Evidence indicates that the same individual who possessed the Samsung Galaxy Note 3 previously used the phone number 253-905-7683.

1 This Application seeks an order requiring Google to use any such capability, so as to
2 assist agents in complying with the search warrants.

3
4 The United States requests that the Court order that Google, if necessary, must
5 reactivate the Google account associated with the Android Devices for the limited
6 purpose of complying with the search warrant.

7
8 Further, the United States requests that Google be directed to: (1) provide a single
9 password reset for each of the Android Devices; (2) provide the new password to the law
10 enforcement officer executing the search warrants; and (3) upon unlocking the target
11 Android Devices, again reset the Google account password promptly upon notice that the
12 imaging of the phones is complete, without providing it to the law enforcement officer or
13 agency so as to prevent future access.

14
15 Further, the United States represents that the reset process may not be unobtrusive
16 to the subject and that the subject may receive notice to one or more accounts of the reset.
17 Accordingly, the United States requests that the Court order that any such notice is not a
18 violation of any seal or nondisclosure requirement.

19
20 Finally, the United States does not seek authority to use the new password to
21 attempt to access the subject's online accounts other than as synchronized on, and stored
22 in, memory within the target Android Devices at the time of execution of the warrants,
23 and does not object to the Court prohibiting such use of the password to be provided by
24 Google.

DISCUSSION

The All Writs Act provides that “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). As the Supreme Court explained, “[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute.” *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985). “The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice... and encompasses even those who have not taken any affirmative action to hinder justice.” *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977). Specifically, in *United States v. New York Tel. Co.*, the Supreme Court held that the All Writs Act permitted district courts to order a telephone company to effectuate a search warrant by installing a pen register. Under the reasoning of *New York Tel. Co.*, this Court has the authority to order Google to use any capabilities it may have to assist in effectuating the search warrant for the Android Devices by unlocking the Android Devices.

The government is aware, and can represent, that in other cases, courts have ordered Google to assist in effectuating a search warrant by unlocking other Android Devices under the authority of the All Writs Act. Additionally, Google has complied with such orders.

1 The requested order would enable agents to comply with this Court's warrants
2 commanding that the Android Devices be examined for evidence identified by the
3 warrants. Examining the Android Devices without Google's assistance, if it is possible at
4 all, would require significant resources and may harm the Android Devices. Moreover,
5 the order is not likely to place any unreasonable burden on Google.

6 **MOTION TO SEAL APPLICATION AND ORDER**

7 The United States further moves this Court for an Order directing that this
8 Application and the Court's Order be sealed.

9
10 DATED this 7th day of July, 2015.

11
12 Respectfully submitted,

13 ANNETTE L. HAYES
14 United States Attorney

15
16 /s/ Benjamin T. Diggs

17 BENJAMIN T. DIGGS
18 Special Assistant U.S. Attorney